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FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in its Rule Governing Pre-sale Availability of Written Warranty Terms. That clearance expires on March 31, 2017.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/presaleavailabilityrulepra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8528, Washington, DC 20580, (202) 326-3711.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require.

“Collection of information” means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission’s Rule Governing Pre-sale Availability of Written Warranty Terms, (the Pre-sale Availability Rule), 16 CFR part 702 (OMB Control Number 3084-0112).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The Pre-sale Availability Rule, 16 C.F.R. 702, is one of three rules¹ that the FTC issued as required by the Magnuson Moss Warranty Act, 15 U.S.C. 2301 et seq. (Warranty Act or Act).² The Pre-sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than \$15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door to door sales. In addition, in 2016, the FTC revised the Rule to allow warrantors to post warranty terms on Internet Web sites

¹ The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than \$15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

² 40 FR 60168 (Dec. 31, 1975).

if they also provide a non-Internet based method for consumers to obtain the warranty terms and satisfy certain other conditions. The revised Rule also allows certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

Pre-sale Availability Rule Burden Statement:

Total annual hours burden: 2,823,803 hours.

In its 2013 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-sale Availability Rule was approximately 2,446,610 hours per year. Staff has adjusted upward its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. From that, staff now estimates that there are approximately 1,028 large manufacturers and 30,299 small manufacturers subject to the Rule. In addition, recent Census data suggests that there are an estimated 7,745 large retailers and 508,575 small retailers impacted by the Rule.

In September 2016, the FTC approved amendments to the Pre-sale Availability Rule, which became effective on October 12, 2016. Under the amendments, warrantors may display warranty terms online and provide information to consumers to obtain those terms via non-Internet means. The amendments also allow sellers to provide pre-sale warranty terms electronically or conventionally if the warrantor has chosen to display its warranty terms online. 81 FR 63664 (Sept. 15, 2016). Sellers of warranted goods for which the warrantor has chosen the online method may incur a slightly increased burden because the seller will have to ensure it

provides consumers a method of reviewing the warranty terms at the point of sale, prior to sale. That burden, however, should be minimal, given that the warrantor will have to make the warranty terms available on an Internet Web site, and given the provision requiring the warrantor to supply a hard copy of the warranty terms, promptly and free of charge, in response to a seller's or a consumer's request. In addition, any burden on sellers could be offset by sellers having additional flexibility to make pre-sale warranty terms available to consumers electronically.

Therefore, staff continues to estimate that large retailers spend an average of 20.8 hours per year and small retailers spend an average 4.8 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,602,256 hours ((7,745 large retailers x 20.8 burden hours) + (508,575 small retailers x 4.8 burden hours)). Staff also estimates that more manufacturers will provide retailers with warranty information in electronic form in fulfilling their obligations under the Rule and thus staff has adjusted the hour burden for manufacturers as it did in its previous submission to OMB. Applying a 20% reduction to its previous estimates, staff now assumes that large manufacturers spend an average of 26.88 hours per year and that small manufacturers spend an average of 6.4 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 221,547 hours ((1,028 large manufacturers x 26.88 hours) + (30,299 small manufacturers x 6.4 hours)).

Thus, the total annual burden for all covered entities is approximately 2,823,803 hours (2,602,256 hours for retailers + 221,547 hours for manufacturers).

Total annual labor cost: \$62,123,688.

The work required to comply with the Pre-sale Availability Rule entails a mix of clerical work and work performed by sales associates. Staff estimates that half of the total burden hours would likely be performed by sales associates. At the manufacturing level, this work would entail ensuring that the written warranty is available for every warranted consumer product. At the retail level, this work would entail ensuring that the written warranty is made available to the consumer prior to sale. The remaining half of the work required to comply with the Pre-sale Availability Rule is clerical in nature, e.g., shipping or otherwise providing copies of manufacturer warranties to retailers and retailer maintenance of them. Applying a sales associate wage rate of \$24/hour to half of the burden hours and a clerical wage rate of \$20/hour to half of the burden hours, the total annual labor cost burden is approximately \$62,123,688 (1,411,902 hours x \$24 per hour) + (1,411,902 hours x \$20 per hour).³

Total annual capital or other non-labor costs: De minimis.

The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the 2016 amendments entails providing retailers, together with the warranted good, a copy of the warranty or the address of the warrantor's Internet Web site where the consumer can review and obtain the warranty terms, along with the contact information

³ The wage rates are derived from occupational data found in the Bureau of Labor Statistics, Occupational Employment and Wages (May 2015).

where the consumer may use a non-Internet based method to obtain a free copy of the warranty terms. Commission staff believes that, in light of the amendments, annual capital or other non-labor costs will remain *de minimis*.

Request for Comments

You can file a comment online or on paper. Write “Pre-sale Availability Rule: Paperwork Comment, FTC File No. P044403” on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include

competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/presaleavailabilitypra>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that Web site.

If you file your comment on paper, write “Pre-sale Availability Rule: Paperwork Comment, FTC File No. P044403” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and

responsive public comments that it receives on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,

Acting General Counsel.

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